***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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W.P.No. 24364 of 2005

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% 27.12.2005

Between:

N.Appala Ram S/o.Surapa Naidu
R/o.Velagawada Village, Palakonda Post, Srikakulam District.

..... PETITIONER

AND

1 The Commandant, Central Industrial Security Force,
CISF Unit, Visakhapatnam Steel Plant, Visakhapatnam and others

.....RESPONDENTS

-

! Counsel for the Petitioner: Sri G.Vidyasagar

^ COUNSEL FOR THE RESPONDENTS: Sri P.Chandrasekhar Reddy,
Addl.Standing Counsel

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> Head Note:

? CITATIONS:

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

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Dated 27-12-2005

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ORDER:

The petitioner was employed as Constable in the Central Industrial Security Force, in the year 1987. He was posted in the C.I.S.F. Unit of Visakhapatnam Steel Plant, in the night shift, of the intervening night of 21-11-2003 and 22-11-2003, at one of the gates. During the checking by two Inspectors of the C.I.S.F., it was noticed that six notes of Rs.10/- denomination, were under the tablecloth, in the computer room. On this, the Deputy Commandant of the Unit issued a charge memo, dated 12-12-2003 to the petitioner. The petitioner submitted his explanation on 20-12-2003. On a consideration of the explanation, the Deputy Commandant, the 3rd respondent passed an order dated 31-12-2003, imposing the punishment of withholding of one increment, for a period of one year, without cumulative effect.

About three months thereafter, the 1st respondent herein reviewed the matter *suo motu*, and passed an order dated
17-03-2004, cancelling the order dated 31-12-2003, without prejudice to his right to take further action. He took the view that the penalty imposed against the petitioner is not in accordance with the instructions issued by the higher formations. Having passed this order, the 1st respondent issued a fresh charge memo dated
20-03-2004, to the petitioner. An explanation was submitted to it.
Departmental enquiry was conducted, and a finding was recorded to the effect that the petitioner is guilty of the charge leveled against him. On the basis of the same, the 1st respondent passed an order dated 13-09-2004, imposing the punishment of reduction of pay scale of the petitioner from 3,800/- to 3,050/-, for a period of five years. It was further directed that the petitioner shall not earn increments of pay, for a period of five years, with cumulative effect. Aggrieved by this order, the petitioner preferred an appeal to the 3rd respondent. The appeal was rejected through orders dated
30-06-2005. Hence, this writ petition.

Sri G. Vidyasagar, learned counsel for the petitioner submits that the 1st respondent acted contrary to the letter and spirit of Rule 54, read with Section 9 of the C.I.S.F. Act. He contends that the order passed by the appointing authority on 31-12-2003, imposing the punishment of stoppage of one increment without cumulative effect

could have been set aside, only after hearing the petitioner, and the respondent had cancelled the same unilaterally, without giving opportunity to the petitioner. Learned counsel further submits that even where an authority, referred to, under Rule 54, intends to enhance the punishment, it shall be only on the basis of the material available on record, and he cannot embark upon a fresh enquiry, independently.

Sri P. Chandrasekhar Reddy, learned Additional Standing Counsel for the respondents submits that the power under Rule 54 read with Section 9, is comprehensive and that there is no illegality or infirmity, in the order dated 17-03-2004 passed by the 1st respondent. He contends that the further proceedings against the petitioner were initiated, duly issuing a fresh charge memo, and after conducting a detailed departmental enquiry. Learned Standing Counsel points out that the necessity for the 1st respondent to order departmental enquiry arose, on account of the fact that the appointing authority did not conduct enquiry, obviously, because he inflicted a minor punishment. He submits that the respondents 1 and 2 have examined the matter from the correct perspective, and that no interference is called for.

On the allegation that a sum of Rs.60/- was found unaccounted for, in the premises where the petitioner was working, the 3rd respondent issued a charge memo, dated 12-12-2003. On a consideration of the explanation submitted by the petitioner, the 3rd respondent imposed minor punishment of withholding one increment, for a period of one year, without cumulative effect, through his order dated 31-12-2003. The petitioner did not prefer any appeal against the same.

Section 9 of the Act was amended in the year 1999, providing *inter alia*, for exercise of powers of revision, *suo motu* or otherwise, by a superior officer against the orders passed by an inferior officer, in disciplinary proceedings. Sub-section (2B) was added to Section 9. It reads as under:

Section 9(2B):

> "The authority, as may be prescribed for the purpose of this sub-section, on a revision petition preferred by an aggrieved enrolled member of the force or *suo moto*, may call for, within a prescribed period, the records of any proceeding under section 8 or sub-section (2) or sub-section (2A) and such authority, after making inquiry in the prescribed manner, and subject to the provisions of this Act, pass such order thereon as it thinks fit".

Correspondingly, Rule 54 of the Rules was amended through a notification dated 23-05-2003. It reads as under:

> **Rule 54(1) Revision:**
>
> Any authority superior to the authority making the order may either on his own motion or otherwise call for the records of any inquiry and revise any order made under these rules, and may—
>
> a. confirm, modify or set aside the order; or
>
> b. confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
>
> c. remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
>
> d. pass such order as it may deem fit, within six months of the date of communication of the order proposed to be revised:
>
> Provided that no order imposing or enhancing any penalty shall be made by any revisioning authority unless the enrolled member of the Force concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (i) to (v) of rule 34 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if any, inquiry under rule 36 of Central Industrial Security Force Rules, 2001 has not already been held in the case no such penalty shall be imposed except after an enquiry in the manner laid down in the aforesaid rules".

The 1st respondent had invoked his power under Rule 54 read with Section 9(2B), in relation to the order dated 31-12-2003 passed by the 3rd respondent against the petitioner. However, in the matter of exercise thereof, he has adopted two different courses of action. In the first part of it, he has straightaway set aside the order dated 31-12-2003. At the second stage, he directly issued a fresh charge memo and ordered a *de novo* departmental enquiry against the petitioner, and at the culmination of it, passed an order dated
13-09-2004, imposing the punishment of reduction of pay-scale of the petitioner from Rs.3,800 to 3,050, for a period of five years. He further directed that the petitioner shall not earn increments for a period of five years, and that it shall have the cumulative effect.

It has to be examined, as to how far the course of action adopted by the 1st respondent accords with the relevant provisions and settled principles of law.

To the extent that the 1st respondent has chosen to exercise his powers under the provisions referred to above, there cannot be any plausible objection. The power under the said provisions is comprehensive in nature. It is on an examination of the entire matter, that the 1st respondent must have decided whether to confirm, reduce, enhance or set aside the penalty. The provision permit of, imposition of penalty, if the employee was exonerated of the charges by disciplinary authority. The scheme under Section 9(2B) does not contemplate the process of setting aside an order of punishment imposed against an employee, and reconsideration of the matter, at a subsequent stage.

If the setting aside of an order of punishment against an employee in exercise of *suo motu* powers under the said provisions is the ultimate outcome of such an exercise, the employee cannot be said to have suffered any detriment. However, if such a course is adopted as a prelude to impose a more severe punishment, the employee is entitled to be put on notice, before recourse is had, to such a stage. Apart from a requirement under the principles of natural justice, it is a mandate under proviso to Rule 54. The 1st respondent has chosen to straightaway pass an order on 17/18-03-2004 to the following effect:

> "The punishment of "Withholding of one increment for a period of one year which will not have the effect of postponing his future increments" awarded by DC/VSP Vizag Final Order No.V-15014/CISF/VSP/AD.II/2003/12664, dated 31st December 2003 is hereby cancelled without prejudice to further action which may be considered in the circumstances of the case".

This was not preceded by any show cause notice to the petitioner. The action of the 1st respondent in passing the said order is not only contrary to the letter and spirit of Rule 54 and Section 9(2B), but also is in violation of principles of natural justice.

Assuming that the action of the 1st respondent in passing the order dated 17/18-03-2004 is superfluous, and further assuming that it was open to him, to enhance the punishment against the petitioner without, separately; cancelling the order passed

by the 3rd respondent, it requires to be examined as to whether the subsequent steps taken by the 1st respondent are valid and legal.

The authority exercising the power of revision, either *suo motu* or otherwise, is required in law, to confine his consideration, to the material available on record. The opinion to affirm, modify or set aside an order under revision must be formed, on a consideration of the material, which constituted the basis for the Original Authority. The superior authority, exercising the powers of revision, cannot take into consideration, any other material. Axiomatically, it cannot direct a fresh enquiry to be conducted into the matter. In case, the authority feels that a further enquiry ought to have been made into the matter, the only course open to him is, to require the Original Authority itself, to undertake such further enquiry, duly remitting the matter. Clause (c) of Rule 54 (1) of the Act is very clear, unambiguous and unequivocal, in this regard.

In the instant case, if the first respondent felt that the nature or outcome of the enquiry conducted by the third respondent was not adequate, he ought to have required the latter to conduct further or fresh enquiry, that too, after passing a reasoned order, indicating as to how the enquiry conducted earlier is defective. The action of the first respondent, in directing *de novo* enquiry against the petitioner, without remanding the matter and without pointing any defects in the enquiry conducted by the third respondent, is contrary to the specific provisions of the Act and the Rules, apart from being outside the scope of his power.

If *de novo* enquiry, or for that matter, fresh trial is to be conducted at every stage, such as appeal, revision, review, etc., it would result in chaotic and disastrous consequences. The principles of jurisprudence do not permit for such an exercise. It is settled principle of law that, even an Appellate Authority, which is empowered to appreciate or reappreciate the evidence and substitute its opinion for that of the Original Authority, cannot take into account any new material, at that stage. If the Appellate Authority is of the opinion that the matter needs fresh enquiry, it has to set aside the order under appeal, and remand the matter to the Original Authority. The discretion of an authority, exercising powers of revision, in this regard, is further restricted. Such an authority does not have the same freedom, as does an Appellate Authority. It is not supposed to reappreciate the evidence, or substitute its opinion, for that of the Original Authority. It is only when a serious irregularity or a legal

infirmity in the orders under revision is noticed, that it can interfere.

From the foregoing discussion, it has emerged that the first respondent committed irregularity at two stages, *viz*, while setting aside the order dated 31.12.2003, passed by the third respondent, without issuing any notice to the petitioner, and while ordering

de novo enquiry, against the petitioner by himself, without remitting the matter to the third respondent. Therefore, the consequential order dated 20.3.2004 cannot be sustained in law.

The writ petition therefore is allowed, and the impugned order is accordingly set aside. Consequently, the order dated 31.12.2003, passed by the third respondent, shall stand revived. The petitioner shall be reimbursed the monetary loss caused to him, on account of the impugned order, within a period of two months from the date of receipt of a copy of this order. In case, the first respondent wants to exercise powers of revision under Section 9 of the Act, read with Rule 54 of the Rules, it shall be open to him to do so, duly following the procedure prescribed by law. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Dt. 27th December 2005

Note:

L.R. copy to be marked.

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